UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

SECURITY WALLS, LLC

and Case 13-CA-114946

INTERNATIONAL UNION SECURITY POLICE
FIRE PROFESSIONALS OF AMERICA (SPFPA)
AND ITS LOCAL NO. 554

JOINT MOTION TO SUBMIT STIPULATED RECORD TO THE BOARD AND JOINT STIPULATION OF FACTS

This is a joint Motion by the parties to this case, Respondent, Charging Party and General Counsel, to waive a hearing and to transfer this case to the Board pursuant to Section 102.35(a)(9) of the Board's Rules and Regulations. The transfer of the case will effectuate the purposes of the Act and avoid unnecessary costs and delay.

If this Motion is granted, the parties agree to the following:

1. The Record in this case consists of the Charge, the First Amended Charge, the Complaint, the First Amended Complaint, the Second Amended Complaint, the Respondent's Answers, the Board's Decision and Order Granting in Part and Denying in Part Motions for Summary Judgment, the Stipulation of Facts, the Statement of Issues Presented, and each party's Statement of Position.

2. This case is submitted directly to the Board for issuance of findings of fact, conclusions of law and an Order.

3. The parties waive a hearing, findings of fact, conclusions of law and order by an Administrative Law Judge.

4. The Board should set a time for the filing of briefs.

5. This stipulation is made without prejudice to any objection that any party may have as to the relevancy of any facts stated herein.

Statement of Issues Presented:

(1) Whether, prior to the execution of a collective-bargaining agreement or the establishment of a binding procedure to handle grievances, the Respondent exercised its discretion to unilaterally suspend employee Matthew Terres about August 18, 2013, and terminate his employment about August 22, 2013, without providing the newly-recognized Union with prior notice and an opportunity to bargain about Terres' discipline;

(2) Whether a make-whole remedy, including search-for-work expenses, is an appropriate remedy for Respondent's alleged refusal to bargain over discretionary discipline.

Stipulation of Facts:

A. Procedural Facts

This Joint Stipulation of Facts, along with the attached Exhibits below, contains the entire agreement between the parties, there being no other agreement of any kind, oral or otherwise, expressed or implied, which varies, alters, or adds to the Joint Stipulation of Facts.

1) The Charge in this proceeding was filed by the Union on October 18, 2013, and a copy was served by regular mail on Respondent on October 18, 2013.

2) The First Amended Charge in this proceeding was filed by the Union on January 30, 2014, and a copy was served by regular mail on Respondent on January 30, 2014.

3) Complaint and Notice of Hearing issued February 12, 2014, and was served by certified mail on Respondent on February 12, 2014.

4) Respondent's Answer to the February 12, 2014 Complaint was received on February 28, 2014.

5) The First Amended Complaint and Notice of Hearing issued March 12, 2014.

6) Respondent's Answer to the March 12, 2014, First Amended Complaint was received on March 25, 2014.

7) On August 29, 2014, the Board issued a Decision and Order Granting in Part and Denying in Part Motions for Summary Judgment in this case. *Security Walls, LLC*, 361 NLRB No. 29, slip op. (Aug. 29, 2014).[1]

[1] The Board granted summary judgment to the General Counsel on the unfair labor practices alleged in paragraph VII(a-c) and the related part of paragraph VIII of the First Amended Complaint. In so doing, the Board made findings of fact as to the allegations in paragraphs II(a-c), III, IV (with regard to chief manager Juanita Walls only), V, and VII. The facts found by the Board in *Security Walls, LLC*, 361 NLRB No. 29, slip op. (Aug. 29, 2014) are hereby incorporated into this Joint Stipulation of Facts. To the extent that there are minor variations between the allegations in the Second Amended Complaint by the Board and the facts set forth in this Joint Stipulation, the Second Amended Complaint is amended to conform to the Joint Stipulation of Facts.

7) The Second Amended Complaint and Notice of Hearing issued February 18, 2015.

8) Respondent's Answer to the February 18, 2015, First Amended Complaint was received on March 4, 2015.

B. Substantive Facts

9) At all material times, Respondent, a limited liability company with an office and place of business in Knoxville, Tennessee, has been providing security services for Argonne National Laboratory located in Argonne, Illinois, hereafter referred to as Respondent's facility.

10) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act.

Juanita Walls	Chief Manager
Hunter Gilmore	Project Manager

12) The following employees of Respondent ("the Unit") constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time, and regular part-time Security Officers and Sergeants performing security duties as defined in Section 9(b)(3) of the Act for the Employer at the Argonne National Laboratory, located at 9700 South Cass Avenue, Argonne, Illinois, but excluding all office clerical employees, professional employees and supervisors as defined in the Act.

13) The Union was certified as the representative of the Unit in Case Number 13-RC-21717.

14) About December 1, 2012, Respondent, through Juanita Walls, recognized the Union as the exclusive collective-bargaining representative of the Unit.

15) Respondent and the Union bargained and entered into tentative agreements on various collective-bargaining agreement provisions beginning about February 2013 and ending about December 2013.

16) Respondent and the Union entered into a grievance and arbitration tentative agreement on April 17, 2013.

17) Respondent and the Union entered into a management rights tentative agreement on April 17, 2013.

18) About August 18, 2013, Respondent suspended its employee Matthew Terres. On the direction of project manager Gilmore, Terres was relieved of his duties and informed that he should turn in his badge and other Protective Force equipment and go home until he was contacted by Gilmore.

19) Respondent did not notify the Union that it intended to suspend Terres before it implemented Terres' suspension, nor did Respondent notify the Union after it implemented Terres' suspension that Respondent had suspended Terres.

20) Respondent did not bargain with the Union regarding its intention to suspend Terres or about the suspension after suspending Terres.

21) About August 21, 2013, by telephone, project manager Gilmore instructed Terres to report to the Argonne facility on August 22, 2013, for a disciplinary meeting.

22) About August 22, 2013, by project manager Gilmore, Respondent terminated Matthew Terres' employment, assertedly for the conduct described in a termination notice of the same date, including alleged violations of the "Rules/Standards of Conduct: Employee Conduct and Work Rules" section of the Security Walls, LLC Officer Handbook.

23) Terres invited fellow employee of Respondent and chief union steward Adam Koshiol to accompany him to the August 22, 2013, discharge meeting and Koshiol attended the meeting with Terres.

24) At the August 22, 2013, discharge meeting, project manager Gilmore informed chief union steward Koshiol that he had no reason to attend the meeting.

25) During the discharge meeting, chief union steward Koshiol initiated a telephone call to Union Director Guy Thomas, who attended a portion of the August 22, 2013, discharge meeting by telephone.

26) During the August 22, 2013, discharge meeting, Union Director Thomas asked project manager Gilmore to inform him why Terres was being discharged. Project manager Gilmore did not respond to Thomas's question.

27) The "Security Walls, LLC Officer Handbook" referenced in paragraph 22 was not negotiated with the Union.

28) The above-referenced "Security Walls, LLC Officer Handbook" contains the following language:

Page	Language
Forward	The Company retains the right to amend, suspend, interpret or cancel in whole or in part any of the published or unpublished policies and practices of the Company, without notice. The Company remains the final authority as to the proper interpretation and application of the provisions of this Handbook.
13-14	…the Company reserves the right to take

	disciplinary action up to and including termination with an employee for conduct not included here or to modify and revise this list: * * * 6. Gross insubordination or misconduct on Company/client premises * * * 19. Refusal to follow lawful instruction of a supervisor * * * 20. Inappropriate, abusive, offensive or aggressive language to clients, public, or fellow employees.

29) Respondent exercised discretion in imposing the discipline described above in paragraphs 18 and 22.

30) The subjects set forth in paragraphs 18 and 22 relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purpose of collective bargaining.

31) Respondent did not notify the Union that it intended to discharge Terres before it implemented Terres' discharge, nor did Respondent notify the Union after it discharged Terres that Respondent had discharged Terres.

32) Respondent did not bargain with the Union regarding its intention to discharge Terres or about the discharge after discharging Terres.

33) Respondent's Chief Manager, Juanita Walls, signed the parties' first collective-bargaining agreement about January 15, 2014.

34) Union Director Guy Thomas signed the parties' first collective-bargaining agreement about January 24, 2014.

Exhibits to Joint Stipulation of Facts:

Exhibit 1	Charge in Case 13-CA-114946, filed October 18, 2013
Exhibit 2	First Amended Charge in Case 13-CA-114946, filed January 30, 2014
Exhibit 3	Complaint and Notice of Hearing, issued February 12, 2014

Exhibit 4	Respondent's Answer, received February 28, 2014
Exhibit 5	First Amended Complaint and Notice of Hearing, issued March 12, 2014
Exhibit 6	Respondent's Answer to the First Amended Complaint, received March 25, 2014
Exhibit 7	Second Amended Complaint and Notice of Hearing, issued February 18, 2015
Exhibit 8	Respondent's Answer to the February 18, 2015, Second Amended Complaint, received March 4, 2015
Exhibit 9	Board Decision and Order Granting in Part and Denying in Part Motions for Summary Judgment, issued August 29, 2014
Exhibit 10	Terres' Termination Notice, dated August 22, 2013
Exhibit 11	Security Walls LLC Officer Handbook
Exhibit 12	All Tentative Agreements between the Parties
Exhibit 13	Executed Collective-Bargaining Agreement between the Parties

Conclusion:

The parties respectfully request that the Board grant the instant Joint Motion and adjudicate the case based upon the above Joint Stipulation of Facts.

The General Counsel's Statement of Position:

Respondent has breached its duty to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act by failing to bargain with the Union over security officer Matthew Terres' discretionary suspension and discharge. Respondent's argument that the tentative agreement reached during the course of bargaining constitutes a "binding" grievance-arbitration process such as to relieve it of its duty to bargain with the Union over discretionary discipline has no support in Board law. Nor are Respondent's reasons for the unilateral disciplinary actions that it took against security officer Matthew Terres sufficient to satisfy the exigent circumstances exception identified by the Board as excusing an employer's failure to engage in preimposition bargaining with its employees' union.

Simply stated, it is unlawful for an employer to refuse to bargain with respect to mandatory subjects of bargaining. *Fibreboard Paper Prods. v. NLRB*, 379 U.S. 203, 209-210 (1964). Where a union represents a unit of employees, there is a duty on the part of the employer to negotiate with the union over discretionary decisions involving mandatory subjects of bargaining such as wages, hours, and working conditions. *NLRB v. Katz,* 369 U.S. 736, 746 (1962) (discretionary raises found to be mandatory subject of bargaining). Further, discretionary changes in terms and conditions of employment cannot be unilaterally imposed. *Eugene Iovine, Inc.,* 328 NLRB 294, 294 (1999) (discretionary reduction in employee hours held to be a mandatory subject of bargaining in the absence of demonstrated past practice). Accordingly, employers not only have a duty to maintain the status quo of existing employment policies affecting terms and condition of employment, they also have to bargain over discretionary decisions to implement those policies. Thus, where an employer's preexisting labor relations discipline policy contains an element of discretion, bargaining is required before discretionary discipline is imposed. As explained by the Board in *Alan Ritchey, Inc.*, even in the absence of a collective-bargaining agreement, an employer violates Section 8(a)(1) and (5) of the Act by unilaterally changing the terms and conditions of employment of employees represented by a

union. 359 NLRB No. 40, slip op. at 4 (Dec. 14, 2012);[2] contra *Fresno Bee*, 337 NLRB 1161, 1161 (2002) (affirming the judge's rulings, findings, and conclusions, as modified).

As the Board explained: "[d]isciplinary actions such as suspension ... and discharge plainly have an inevitable and immediate impact on employees' tenure, status or earnings .... Requiring bargaining before these sanctions are imposed is appropriate ... [b]ecause of this impact on the employee and because of the harm caused to the union's effectiveness as the employees' representative if bargaining is postponed." *Alan Ritchey*, 359 NLRB No. 40, slip op. at 4. In this case, (1) the Union was the newly-recognized representative of the Respondent's security officers and sergeants; (2) Terres' discipline occurred before the parties had in place a first contract; (3) Respondent exercised discretion in deciding to suspend and then discharge Terres; (4) Respondent has not demonstrated that any exigent circumstances required immediate action such that it had a reasonable, good-faith belief that Terres' continued presence on the job presented a serious, imminent danger to the employer's business or personnel; and (5) there was no interim grievance procedure in place at the time of Terres' discharge. Under the circumstances here, Respondent has violated Section 8(a)(5) of the Act.

Respondent's position that the grievance and arbitration tentative agreement was final and binding so as to relieve it of the duty to bargain with the Union prior to imposing discipline is untenable in the face of the Board's well-established rule that absent evidence that the parties intended a provision to be final and binding, tentative agreements made during the course of negotiations are not final and binding until the final contract, in its entirety, is agreed upon. See, e.g. *Hospital Perea Unidad*, 356 NLRB No. 150, slip op. at 12 (Apr. 29, 2011); *Vincent/Metro Trucking, LLC*, 355 NLRB 289, 293 (2010); *Taylor Warehouse Corp.*, 314 NLRB 516, 517 (1994) (union's initialing of the respondent's scope proposal did not result in a binding agreement), enfd. 98 F.3d 892 (6th Cir. 1996). In the absence of proof that both parties intended such a provision to be implemented immediately, the legal presumption remains that no agreement becomes final and binding until a final collective-bargaining agreement is reached in its entirety. *Hospital Perea Unidad*, 356 NLRB No. 150, slip op. at 12 (citing *Cold Heading Co.*, 332 NLRB 956, 971 (2000); *Taylor Warehouse Corp.*, 314 NLRB at 517; *Stroemann Bakeries, Inc.*, 289 NLRB 1523, 1524 (1988)).

Further, Respondent argues that it did not violate the Act by refusing to engage in preimposition bargaining with the Union because it acted pursuant to the exigent circumstances exception identified by the *Alan Ritchey* Board. 359 NLRB No. 40, slip op. at 8. Suffice it to say for now that even had Respondent been justified in taking immediate disciplinary action against Terres without bargaining with the Union, it was duty-bound to engage in post-imposition bargaining with the Union (*id.* at 9; 9 n. 19), which Respondent admits that it did not do.

In addition to notice posting and traditional remedies, the General Counsel's Second Amended Complaint seeks a make-whole remedy to rectify Respondent's breach of its statutory duty to bargain by failing to bargain with the certified sole representative of its employees over security officer Terres' suspension and discharge. Where an employer violates Section 8(a)(5)

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[2] *Alan Ritchey, Inc.*, 359 NLRB No. 40, slip op. (Dec. 14, 2012) was issued by a panel that, under *Noel Canning*, 134 S.Ct. 2550 (Jun. 26, 2014), was not properly constituted. It is the General Counsel's position that *Alan Ritchey* was soundly reasoned, and that the rationale stated therein should be adhered to.

by unilaterally changing terms and conditions of employment, the Board orders the employer to restore the status quo ante by, among other things, reinstating and making whole discharged employees and rescinding discipline where the discharges or discipline resulted from the unlawful unilateral change. *Carey Salt Co.*, 358 NLRB No. 124, slip op. at 1 n. 3 (2012) (ordering employer to reinstate and make whole any employees who may have lost their employment as a result of unilateral changes implemented when parties were not at a valid impasse), enfd in pertinent part, 736 F.3d 405 (5th Cir. 2013); *Alta Vista Regional Hosp.*, 355 NLRB 265, 268 (2010) (ordering employer to reinstate and make whole employees discharged as a result of unilateral change in practice concerning fit tests), supplemental decision, 357 NLRB No. 36, slip op. (Aug. 2, 2011), enfd, 697 F.3d 1181 (D.C. Cir. 2012).

Contrary to Respondent's arguments, the parties' management rights tentative agreement is simply not relevant to the determination of whether Respondent violated the Act as alleged. Further, even if Respondent's discipline of Terres was for cause, Section 10(c) of the Act[3] does not prevent the imposition of a bargaining order and make-whole remedy to address Respondent's unfair labor practice because where an employer administers discretionary discipline, there is no established cause standard. See *Uniserv*, 351 NLRB 1361, 1361 n 1 and 2 (2007) (bargaining order and make-whole remedy for unilaterally implemented zero-tolerance drug use policy; noting that the *Anheuser-Busch* Board limited the denial of a make-whole remedy to the facts of that case. 351 NLRB 644, 645 (2007)).

Finally, under well-established Board law, when evaluating a backpay award, the "primary focus clearly must be on making employees whole." *Jackson Hosp. Corp.*, 356 NLRB No. 8, slip op. at 3 (Oct. 22, 2010). Therefore, as part of a make-whole remedy, discriminatees are entitled to reimbursement of expenses incurred while seeking interim employment, where such expenses would not have been necessary had the employee been able to maintain working for respondent. *Deena Artware, Inc.*, 112 NLRB 371, 374 (1955); *Crossett Lumber Co.*, 8 NLRB 440, 498 (1938). Respondent's unilateral suspension and discharge of Security Officer Terres violated Section 8(a)(5) and (1) of the Act, thus a make whole remedy is necessary and warranted here, including search for work expenses.

The Charging Party's Statement of Position:

The Charging Party adopts and incorporates the General Counsel's Statement of Position as its Statement. In particular, the Charging Party joins the General Counsel's position that the rationale in *Alan Ritchey, Inc.*, 359 NLRB No. 40 is applicable in the instant matter. On the basis of the Stipulation of Facts, and the reasons set forth by Counsel for the General Counsel, and endorsed by the Charging Party, the General Counsel's motion for summary judgment should be granted and a make-whole remedy awarded.

[3] In pertinent part, Section 10(c) of the Act provides "No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any backpay, if such individual was suspended or discharged for cause."

The Respondent's Statement of Position:

A clear reading of *Alan Ritchey Corp.*, 359 NLRB No. 40 (2012) demonstrates that Respondent's actions in connection with its failure to notify and subsequent refusal to bargain with the Union over discipline imposed upon Matthew Terres is entirely consistent with the Board's decision in that case.

In Section 1 of *Alan Ritchey*, the Board stated: "The issue arises in this case, as it typically will, after the employees voted to be represented by the Union, but before the parties entered into a collective-bargaining agreement." In contrast in the instant case, the Respondent, as a successor employer, recognized the Union and entered into collective-bargaining negotiations.

In *Alan Ritchey*, the Board went on to say:

> The Board has never clearly and adequately explained when (and if so, to what extent) this established doctrine applies to the unilateral discipline of individual employees. We now conclude that it does, and that an employer must provide its employees' bargaining representative notice and the opportunity to bargain with it in good Faith before exercising its discretion to impose certain discipline on individual employees, *absent a binding agreement with the Union providing for a process, such as a grievance - arbitration system, to resolve such disputes.* (Emphasis supplied).

In the instant case, the Parties did enter into ". . . a binding agreement with the union providing for a process, such as a grievance – arbitration system to resolve such disputes. . . " As set out in Respondent's Motion for Summary Judgment (filed in this case on March 31, 2014), during the early stages of collective bargaining, the Parties, on April 17, 2013, agreed to and executed Articles addressing Management Rights - to discipline for just cause, as well as a system for resolving disputes, specifically – the Grievance and Arbitration Procedure.
In *Alan Ritchey*, the board clearly observed and noted that recognition of the Union occurred prior to the Parties in that case having entered into a collective-bargaining agreement or "other binding agreement governing discipline" or a process to resolve such disputes. The Board clearly stated that *absent* a binding agreement between the Parties, the obligation to notify and negotiate arises.

However, as further recognized by the Board in *Alan Ritchey*:

> An employer seeking a safe harbor regarding its duty to bargain before imposing discipline may negotiate with the union an interim grievance procedure that would permit the employer to act first followed by a grievance and, potentially, arbitration, as is typical in most complete collective-bargaining agreements.

Alan Ritchey, 359 NLRB at n.20.

Here, the Parties did in fact enter into agreements, executed by their authorized representatives, to define the rights of management in setting discipline, and to set out a

procedure to resolve disputes which might arise from such discipline. What other intent could be ascribed to the Board in *Alan Ritchey* other than only under circumstances when the Parties have *not* agreed to a methodology to discipline and resolve discipline, does the obligation to notify and bargain arise. Regardless of whether the agreements entered into by the Parties are characterized as "interim" or "tentative" they are nonetheless "agreements" addressing the very issues raised in *Alan Ritchey.* A tentative agreement can only be arrived at by agreement of the Parties, and in practice, the language agreed to in a tentative agreement on any issue is the exact language the Parties intend to become part and parcel of a final agreement.[4] What evidence other than a separately executed memorandum of agreement or other such document specifically addressing the issues agreed to in the form of a tentative agreement could that be that any particular provision is intended to be final and binding? Respondent respectfully submits that under the provisions of Title III, Section 301(b), the Parties are thereto bound.
Moreover, neither Party to a tentative agreement may unilaterally refute, or modify any agreement to which the Parties have agreed and executed. The Board made this clear in its decision in *Lou's Produce,* 308 NLRB 1194 (1992), where it noted that: ". . . during contract negotiations. . . [the employer] . . . tentatively agreed to continue making contributions to the Teamster Pension Trust, at a higher rate, as part of a successor agreement." In enforcing the terms of the tentative agreement the Board stated:

> By unilaterally discontinuing pension contributions . . . without first bargaining to impasse, with the Union, the Respondent failed and refused to bargain in good faith.

Lou's Produce, 308 NLRB at 1194.

Accordingly, both Union and Management are bound to the agreements entered into by their agents. (Title III, Section 301(b)). The Parties here entered into binding agreements providing a process – such as a grievance - arbitration system to resolve disputes and the onus in the instant case was on the Union to grieve Matthew Terres' dismissal – not on the Respondent to notify and bargain with the Union over the discipline, inasmuch as Respondent's actions were a valid exercise of its Management Rights as agreed upon by the Parties. Accordingly in the instant matter, it is the Union that unilaterally discontinued the Grievance-Arbitration Procedure to which the Parties had agreed, and to which they were bound.

Based upon the foregoing, respondent respectfully submits that it has followed not only the letter of Board law, but the spirit of that law as well. Respondent has complied fully with the requirements set out by the Board in *Alan Ritchey* regardless of the strenuous argument of the General Counsel. Respondent was not obligated to notify or bargain with the Union prior to dismissing Matthew Terres' termination, and there has been no violation of Board law.

The Respondent notes that in addition to notice posting and traditional remedies, the General Counsel is seeking, in this case, a make-whole remedy. In the instant case, such make-whole remedy is prohibited by Section 10(c) because Matthew Terres was, in fact, terminated for cause.

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[4] It should be noted that the tentative agreements on both Management Rights and the Grievance Procedure agreed to and signed by the Parties on April 17, 2013, were incorporated verbatim into the final CBA signed into existence on January 24, 2014.

Section 8(a)(5) of the National Labor Relations Act (the Act) imposes a duty on employers to bargain with the Union representing its employees over terms and conditions of employment. When an employer unilaterally changes terms and conditions of employment without first offering to bargain over the changes, the Board may find a violation of Section 8(a)(5). The ordinary remedy in such a situation is to restore the status quo, and an employee who has been discharged or disciplined as a direct result of the employers action is entitled to not only have the discipline rescinded, but to be reinstated and made whole through the award of backpay. However, Section 10(c) prohibits such make-whole remedies when the employee is disciplined "for cause." In *Anheuser-Busch Inc.*, 351 NLRB 645 (2007), the Board addressed the conflict between these two concepts and concluded that an employee who has been discharged or disciplined for misconduct, even though the employer violated Section 8(a)(5) in imposing such discharge or discipline, is not entitled to reinstatement and backpay.

In *Anheuser-Busch*, the employer suspected that employees were using illegal drugs in a break room and installed hidden surveillance cameras for a period of six weeks. Although the Board had previously ruled that installation and use of hidden cameras to detect and punish employee misconduct constituted a change in the terms and conditions of employment, the employer did not notify the Union about the surveillance until after it was discontinued. The surveillance produced evidence of sixteen employees engaging in misconduct. Five of these employees were discharged and eleven were suspended.

Although the Board found that the surveillance violated Section 8(a)(5), it held that the employees who were discharged and disciplined were not entitled to the make-whole relief of reinstatement and backpay. Relying on the Section 10(c) prohibition against make-whole remedies for employees who are disciplined for cause, the Board reasoned that discipline "for cause" refers to discipline that is not imposed for a reason prohibited by the Act. The employees in *Anheuser-Busch* were disciplined and discharged for unauthorized breaks and using illegal drugs on company property – reasons not prohibited by the Act. Further, noting the policy considerations against allowing employees who have engaged in misconduct to receive a windfall award of backpay and reinstatement and the adequacy of other remedies (such as a cease-and-desist order) for the Section 8(a)(5) violation, the Board held that Section 10(c) bars male-whole relief for employees disciplined or discharged for misconduct, even though that misconduct was discovered through means that were implemented in violation of the employer's duty to bargain under Section 8(a)(5).

In the instant case Matthew Terres was terminated on the basis of gross insubordination, refusal to follow the lawful instruction of a supervisor, and use of inappropriate, abusive, offensive or aggressive language. These are not clearly not protected activities under the Act. Matthew Terres was terminated for cause, and under the overall notion of the reasoning of the Board in Anheuser-Busch, Terres should not be rewarded for such egregious conduct by receiving a make-whole remedy.[5]

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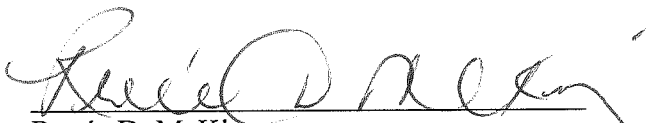
[5] Respondent is mindful of the Board's decision in *Uniserv*, 351 NLRB 1361 (2007) which the General Counsel argues limits the decision in *Anheuser-Bush* to its particular facts. Respondent submits that *Uniserv*, in fact, makes no such limitation on the recognition of the Board in *Anheuser-Busch* that employees terminated for cause should not profit from their misconduct. To the contrary, what *Uniserv* does is recognize a distinction between its facts and

Respectfully submitted this 9th day of March 2015.



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those involved in *Anheuser-Busch*. Because of this distinction, a general for-cause reason for discipline in *Uniserv* did not apply as it did in *Anheuser-Busch*. (See *Uniserv*, 351 NLRB 1361 at n.1). With all due respect to the General Counsel, the recognition of this factual distinction should not be read so broadly as to vitiate or otherwise redefine the overall philosophy of the Board in *Anheuser-Busch*.

UNITED STATES COURT OF APPEALS
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

SECURITY WALLS, LLC	)	
	)	
and	)	**Case 13-CA-114946**
	)	
INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA) AND ITS LOCAL NO. 554	)	

CERTIFICATE OF SERVICE

I certify that I have caused a true and correct copy of the foregoing JOINT MOTION TO SUBMIT STIPULATED RECORD TO THE BOARD AND JOINT STIPULATION OF FACTS to be served upon the following via the NLRB's e-filing system on March 9, 2015:

Gary Shinners, Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

I further certify that I have caused a true and correct copy of the above-referenced document to be served on the following by U.S. Mail or e-mail on March 9, 2015:

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Dated at Chicago, Illinois this 9th day of March 2015.